

**CALENDAR ITEM  
C76**

A	56	02/09/16 W 26855 503.2065
S	40	J. Fabel

**CONSIDER A COMPROMISE TITLE SETTLEMENT AND EXCHANGE AGREEMENT BETWEEN THE STATE OF CALIFORNIA ACTING BY AND THROUGH THE CALIFORNIA STATE LANDS COMMISSION, IN ITS REGULAR CAPACITY AND AS TRUSTEE OF THE KAPILOFF LAND BANK FUND, AND SPORTSMAN'S PARADISE, INC., REGARDING CERTAIN INTERESTS IN LANDS IN THE HISTORIC BED OF THE COLORADO RIVER, COUNTY OF IMPERIAL, CALIFORNIA**

**PARTIES:**

Sportsman's Paradise, Inc.

State of California, acting by and through the State Lands Commission, in its regular capacity and as Trustee of the Kapiloff Land Bank Fund

**PROPOSED AGREEMENT:**

The proposed Compromise Title Settlement and Exchange Agreement ("Agreement") will settle title and boundary disputes related to quiet title litigation initiated by Sportsman's Paradise, Inc. ("SPI"), titled *Sportsman's Paradise, Inc., v. State of California*, Superior Court, Imperial County (case ECU08225). The settlement will effectuate a land exchange by terminating the State's sovereign public trust interests in five (5) acres, more or less, of cut-off and filled land located on an historic channel of the Colorado River located in the NE ¼ of the SW ¼, Section 12, Township 9 South, Range 21 East, SBM ("Trust Termination Parcel") and conveying that land by quitclaim to SPI in exchange for a deposit of \$9,250 into the Kapiloff Land Bank Fund ("Kapiloff Fund"). In addition, and in order to clear title, the State will disclaim any interest in certain parcels located in Section 11, Township 9 South, Range 21 East, SBM, (more specifically described in Exhibit A) previously deeded to SPI through a private party sale ("Disclaimer Parcels") (parcels in the Agreement are collectively referred to as "Subject Parcels"). The Agreement is entered into pursuant to Public Resources Code sections 6107 and 6307. The location of the Trust Termination Parcel and Disclaimer Parcels is depicted, for reference purposes only, in Exhibit B.

Specifically, the terms of the proposed Agreement provide for the following:

1. The Commission will convey to SPI by quitclaim deed, five (5) acres, more or less, and terminate the public trust in the Trust Termination Parcel;

CALENDAR ITEM NO. **C76** (CONT'D)

2. In exchange, SPI will deposit \$9,250 into the Kapiloff Fund; and,
3. The State, acting by and through the Commission, will disclaim any interest in the Disclaimer Parcels.

**BACKGROUND:**

Upon its admission to the United States of America on September 9, 1850, the State of California ("State"), by virtue of its sovereignty under the Equal Footing Doctrine of the Constitution of the United States, received in trust for the people of California all right, title, and interest in the beds of navigable rivers within its boundaries for certain public trust purposes including but not limited to commerce, navigation and fisheries. The Colorado River along the California–Arizona border is historically navigable.

In the early 20th century, in order to straighten out the flow of the Colorado River and to prevent flooding and the breach of levees, the Palo Verde Irrigation District commenced the construction of numerous artificial channels, or "cuts" by way of dredging to redirect the flow of the Colorado River. In approximately 1930, the Palo Verde Irrigation District constructed a cut later known as the "Keele Cut" adjacent to the Trust Termination Parcel. From 1930 to approximately 1964, the portion of the Colorado River adjacent to the Keele Cut moved in a southerly and westerly direction. Between the late 1960s and early 1970s, the U.S. Bureau of Reclamation re-channelized the Colorado River cutting off its natural flow to what is now an artificially wetted lake known as Oxbow Lake.

Keele Cut

The opening of the Keele Cut in 1930 redirected the flow of the Colorado River. The redirection was avulsive, as opposed to accretive, causing the State's sovereign interest in the Colorado River at this location to remain fixed where the river flowed at that time, just prior to the opening of the Keele Cut. The Commission has relied on the location of this 1930 channel, immediately prior to the opening of Keele Cut, to establish its sovereign ownership. In 1966, the Commission entered into a Boundary Line Agreement (CSLC file No. BLA 75) for lands immediately east of the Trust Termination Parcel to establish a common boundary based on the 1930 river location. On July 19, 1993, the Commission approved an agreement (Calendar Item 26) to exchange the State's entire interest in the filled 1930 channel immediately adjacent to the Trust Termination Parcel for a monetary deposit into the Kapiloff Fund. This exchange was never fully executed.

The Trust Termination Parcel and Disclaimer Parcels

In 1930, prior to the opening of the Keele Cut, a portion of the low-water channel of the Colorado River flowed across the Trust Termination Parcel. From 1930 to

CALENDAR ITEM NO. **C76** (CONT'D)

approximately 1964, the wetted channel moved south and west. Today, the historic 1930 bed within the Trust Termination Parcel is filled and cut-off from the river, zoned for agricultural use, and unsuitable for navigation or fishing. The Disclaimer Parcels lay to the west of the Trust Termination Parcel. According to aerial photographs taken during high-water flows in 1930, the channel of the Colorado River did not appear to encroach on the Disclaimer Parcels. Commission staff has been unable to find any evidence of the 1930 channel of the Colorado River being located on the Disclaimer Parcels.

SPI's Interest in the Parcels

From 1999 to 2001, SPI purchased the area encompassing the Trust Termination Parcel and the Disclaimer Parcels by grant deed through private party sales. Soon after, SPI initiated a process to exchange these lands and others with the U.S. Bureau of Land Management ("BLM") for a parcel north of the Subject Parcels. In 2012, this exchange was at an advanced stage when Commission staff sent a letter to BLM indicating that the State may have an undetermined sovereign interest in the area encompassing the exchange. For BLM, the letter clouded title to the Subject Parcels, effectively postponing its exchange with SPI until SPI could clear its title. SPI and CSLC staff met and conferred but could not reach a resolution on the extent of the State's interest. On May 30, 2014, SPI filed a Quiet Title action in Imperial County Superior Court.

Negotiation of Proposed Settlement Agreement

In early 2015, Commission staff and SPI determined that settlement of the claims based on the location of the 1930 low-water channel of the Colorado River was more appropriate than protracted and costly litigation with uncertain results. As a result of negotiation, this Agreement is proposed to settle the title dispute, allow SPI to clear its title in the Subject Parcels, and benefit the State's interest in exchanging cut-off and filled lands for uses that benefit the public trust. Based on a review of historic aerial photography and surveys, both Commission staff and SPI agree on the location of the historic 1930 low-water channel of the Colorado River, and that the State's interest underlying the Trust Termination Parcel is five (5) acres, more or less. To value this interest, Commission staff conducted an appraisal involving extensive research and consultation with Imperial County and the Palo Verde Irrigation District. The appraisal determined a land value of \$1,850 per acre, or \$9,250 total for the State's interest. The parties further agree that the 1930 channel did not enter the Disclaimer Parcels and thus the State has no sovereign ownership in those parcels.

**LEGAL REQUIREMENTS:**

Pursuant to Public Resources Code sections 6107 and 6307, the Commission is authorized, under certain limited circumstances, to terminate the State's public trust interests and enter into a compromise title settlement and land exchange

CALENDAR ITEM NO. **C76** (CONT'D)

agreement. The Commission may exchange the filled or reclaimed beds of navigable rivers upon certain conditions and upon the requisite findings:

1. The exchange is to resolve a boundary or title dispute;
2. The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust;
3. The exchange does not substantially interfere with public rights of navigation and fishing;
4. The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange;
5. The lands or interests in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes;
6. Mineral interests are not being exchanged as part of this Agreement; and,
7. The exchange is in the best interests of the State.

**ANALYSIS AND STAFF RECOMMENDATION:**

Commission staff analyzed the information available including reports, surveys, survey instructions, maps, historic photographs, and other useful information in order to determine the best evidence of the location of the 1930 channel of the Colorado River as it flowed over the Trust Termination Parcel. Staff then estimated an approximate acreage that fairly accounted for the location of the historic low-water channel. This evidence serves as the basis for the proposed Agreement.

Staff recommends that the Commission approve the proposed Agreement for several reasons. The Agreement provides significant benefits to the public trust because the monetary interest exchanged to the benefit of the State shall be deposited into the Kapiloff Fund for the purpose of acquiring future parcels more suitable to benefiting the public trust. The exchange of the Trust Termination Parcel for monetary consideration will enhance the State's ability to acquire interests in properties that will significantly benefit the public trust.

The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing. The Trust Termination Parcel is within a cut-off and filled channel of the Colorado River, and is unsuitable and no longer utilized for navigation or fishing. The Trust Termination Parcel is distinct and separate in character from Oxbow Lake to the south, which is utilized for recreational boating and fishing.

The \$9,250 deposit into the Kapiloff Fund is equal to the monetary value of the

CALENDAR ITEM NO. C76 (CONT'D)

State interest in the Trust Termination Parcel to be quitclaimed by the State to SPI. This determination is based on a methodologically sound appraisal conducted by the State. The monetary value as appraised equals \$1,850 per acre, or a total of \$9,250 for the State's interest.

The Trust Termination Parcel, consisting of five (5) acres, more or less, being relinquished by the State, is cut off from water access and no longer is in fact submerged lands or a navigable waterway, by virtue of being filled and reclaimed, and is relatively useless for public trust purposes because it resides adjacent to productive farm land and is zoned for agricultural use by Imperial County.

As indicated above, this exchange is in the State's best interests because the Trust Termination Parcel is within a filled and cut-off channel unsuitable for navigation and fishing, and the monetary interest to be deposited into the Kapiloff Fund will be used to acquire land more suitable to benefiting the public trust. Additionally, further litigation of this matter would likely be extremely protracted and costly with uncertain results. The parties to the Agreement consider it expedient, necessary, and in the best interests of the State and SPI to resolve this bona fide dispute through a title settlement and exchange agreement thereby avoiding the substantial costs and uncertainties of continued litigation.

Finally, as to the Disclaimer Parcels, staff has performed extensive analysis and reached the conclusion that the 1930 historic bed of the Colorado River did not cross into the Disclaimer Parcels. Therefore, staff recommends that the State disclaim an interest in those parcels in order to lift the cloud on title.

Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. For the reasons detailed throughout this staff report, staff recommends that the Commission approve the Agreement, in substantially the form on file at the Commission's Sacramento Office, and authorize its execution and the execution and recordation of all documents necessary to implement it.

**OTHER PERTINENT INFORMATION:**

1. The Commission administers the Kapiloff Fund as the trustee under Public Resources Code section 8600 et seq. The Kapiloff Fund facilitates settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value. The types of land that can be acquired with the funds include outstanding interests in tide and submerged lands, lands which may have been converted to wetlands, or adjoining or nearby lands where the public use and

CALENDAR ITEM NO. **C76** (CONT'D)

ownership of the land are necessary or extremely beneficial for the furtherance of public trust purposes. (Pub. Resources Code, § 8613).

2. This activity, although intended to settle litigation against the State, is consistent with Strategic Plan strategy 1.3.3 to acquire property interests that enhance access to, or the resource value of, sovereign lands as trustee of the Kapiloff Land Bank Fund or through title settlements and existing land exchange authority.
  
3. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves settlement of a title and boundary dispute and to an exchange in connection with the settlement.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**IT IS RECOMMENDED THAT THE COMMISSION:**

**CEQA FINDINGS:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, Section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of a title and boundary dispute and an exchange in connection with the settlement.

**AUTHORIZATION:**

Based upon the foregoing analysis and the information contained in the Commission's files, the Commission hereby:

1. Finds that there is a good faith and bona fide dispute as to the State's interests within the Trust Termination Parcel. This Agreement is a settlement of the contested issues of law and evidence upon which the dispute is based, is to resolve title and boundary litigation, and is consistent with and authorized by the requirements of law.

CALENDAR ITEM NO. **C76** (CONT'D)

2. Finds that:
  - A. The lands or interests in lands to be acquired will provide a significant benefit to the public trust.
  - B. The exchange does not substantially interfere with public rights of navigation and fishing.
  - C. The \$9,250 deposit into the Kapiloff Fund is equal to or greater than the monetary value of the State's interest in the Trust Termination Parcel to be quitclaimed by the State to SPI.
  - D. The Trust Termination Parcel, consisting of five (5) acres, more or less, being relinquished by the State, is cut off from water access and no longer is in fact submerged lands or a navigable waterway, by virtue of being filled and reclaimed, and is relatively useless for public trust purposes.
  - E. It is the intent of the Agreement that no mineral interests will be exchanged as part of this Agreement.
  - F. The Agreement is in the best interests of the State.
3. Approves and authorizes the execution, acknowledgment, and recordation of the Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such Agreement on file with the Commission.
4. Authorize the acceptance and deposit of \$9,250 into the Kapiloff Fund to be used only for the purchase of interest(s) in land pursuant to Public Resources Code section 8613, subdivision (a).
5. Authorizes and directs the staff of the Commission and/or the Office of the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to participate on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement and litigation.

## EXHIBIT A

### LAND DESCRIPTION OF TRUST TERMINATION PARCEL

A portion of sovereign land being all that portion of the bed of the Colorado River lying northerly and westerly of the centerline of the bed of the Colorado River, as that bed existed in June, 1930, and lying within the Northeast Quarter of the Southwest Quarter of Section 12, Township 9 South, Range 21 East, SBM, Imperial County, California.

EXCEPTING AND RESERVING unto the State, its successors and assigns, forever, any and all minerals and any and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered in the lands hereby conveyed to the Successor Agency. Such mineral rights shall include, but are not limited to, oil and gas rights, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State or its successors or assigns, except that, notwithstanding Chapter 1333 of the Statutes of 1968, as amended, or Section 6401 of the Public Resources Code, this reservation shall not include the right of the State or its successors or assigns in connection with any mineral exploration, removal, or disposal activity, to do either of the following: (1) Enter upon, use or damage the surface of the lands or interfere with the use of the surface by the grantee or by grantee's successors, assigns, or lessees. However, a lease, franchise, permit, or license of the lands hereby conveyed shall contain a provision specifying at least one point from which, and the manner in which the right of ingress and egress to the subsurface deposits may be exercised, which point or points may be outside the area of the leasehold, franchise, permit, or license as long as the point or points are adequate to permit the rights reserved to the State to be exercised. (2) Conduct any mining activities of any nature whatsoever above the plane located five hundred (500) feet below the surface of the lands without written permission of the grantee or its successors or assigns.

END DESCRIPTION

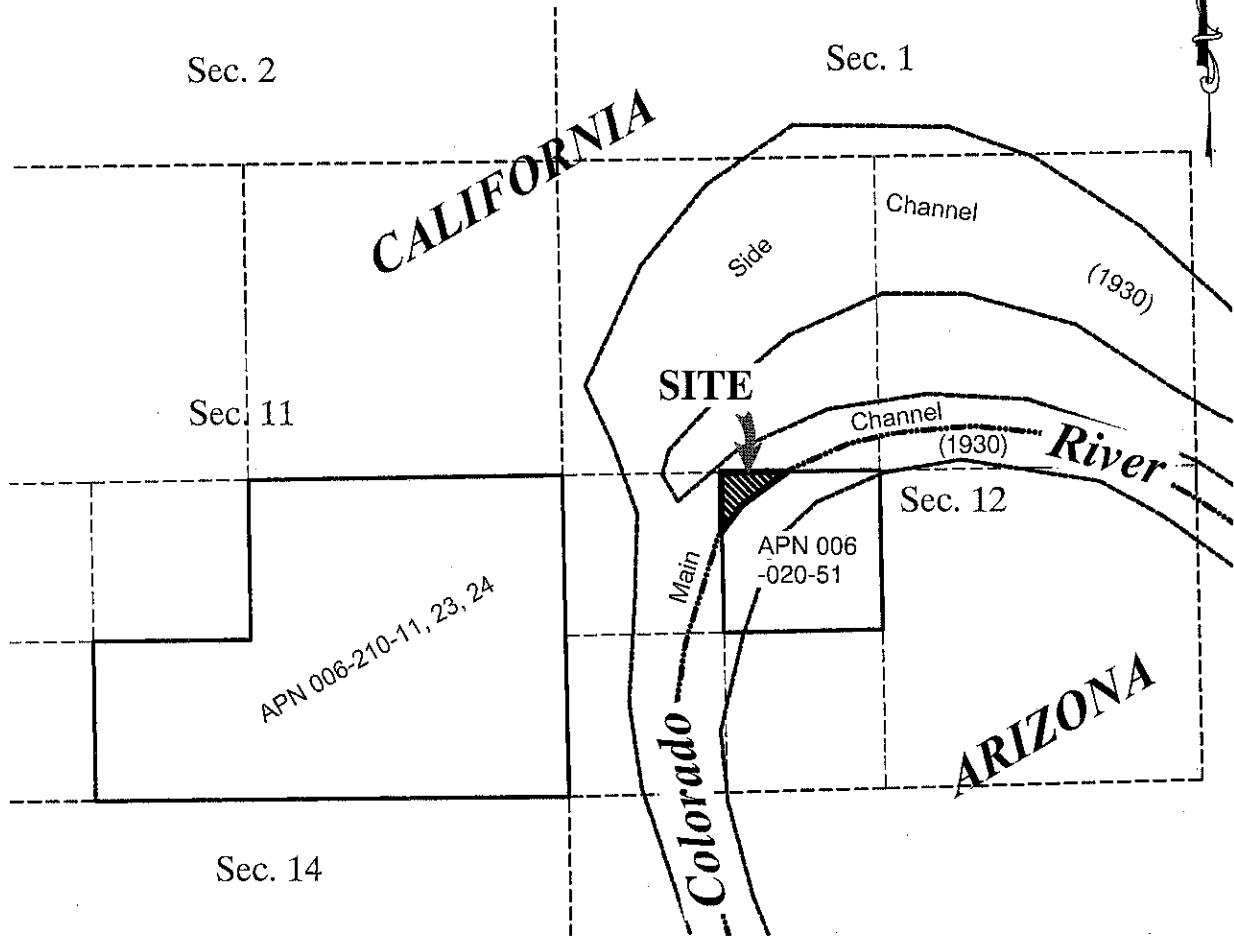


FEB 01, 2016



NO SCALE

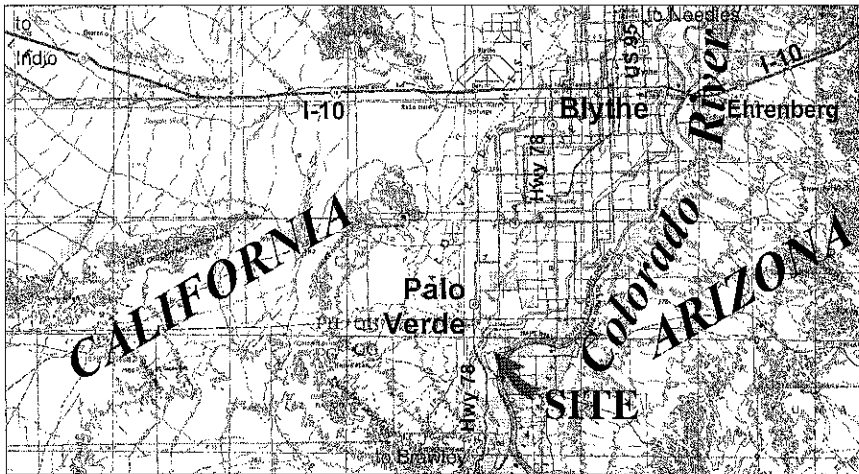
**SITE**



PALO VERDE OXBOW, COLORADO RIVER

NO SCALE

**LOCATION**



MAP SOURCE: USGS QUAD

**Exhibit B**

TITLE SETTLEMENT  
 Sportsman's Paradise, Inc.  
 v. State of California  
 Palo Verde Oxbow  
 IMPERIAL COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.